Supreme Court, U.S.
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NO. _____

In The

Supreme Court of the United States

October Term, 1995

ROBERT L. VINES,

Petitioner,

v.

WILLIAM HAMILTON,
in his individual capacity,

Respondent,

Petition for Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

ROBERT L. VINES
1000 62ND TERRACE SOUTH
ST. PETERSBURG, FL 33705

28 pp

QUESTIONS PRESENTED

1. Whether the documents filed by the defendants were properly executed.

2. Whether the statutes enacted by Congress have a clear unambiguous meaning in this instance.

3. Whether government employees, or any court can change the meaning of a statute.

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Robert L. Vines v. William Hamilton, (U.S. District Court for the Middle District of Florida), Civil No. 94-1020-CIV-T-25C and Robert L. Vines v. William Hamilton, Court of Appeals for the Eleventh Circuit, 95-2234.

JURISDICTIONAL STATEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Eleventh Circuit Court of Appeal's Opinion in this case, filed on June 3, 1996, reported as Case No. 95-2234. (See attached Appendix 1)

STATUTORY PROVISIONS

This case simply involves the clear reading of statutes relied on by the Petitioner, and the "interpretation", by the lower courts of those statutes, which is in complete contradiction to this Court's holdings. Title 26 U.S.C. § 6065 was enacted by Congress with the following words:

> **Sec. 6065. Verification of returns.**
>
> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Obviously the words chosen by Congress to place in that statute were intended to reflect their intent and purpose. Clearly the intent was to recognize the complexity of the internal revenue laws and charge any person or entity with the responsibility to insure that the documents they executed were true and correct as to every material matter, whether government or citizen.

Section 6020 was likewise enacted by Congress for the purpose as stated in that statute as follows:

Sec. 6020. Returns prepared for or executed by Secretary.

(a) Preparation of return by Secretary.

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary.

(1) Authority of Secretary to execute return. If any person fails to make any return required by an internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

> (2) Status of returns. Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

Section 1361 of Title 28 U.S.C. was clearly enacted by Congress to insure that all statutes were scrupulously followed by the government. The District Courts were granted authority to compel all government employees to perform their duty as required by law. Section 1361 contains the following words:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

STATEMENT OF THE CASE

This is a case whereas the petitioner sought to determine if the District Court would indeed compel government employees to enforce the laws enacted by Congress. The defendant government employees were operating outside the authority of the Federal laws governing their scope of employment. Instead of accepting the Federal laws as they were written, the lower courts through judicial legislation, determined that 28 U.S.C. § 1361 really did not mean what was clearly written by Congress, and insisted that the petitioner was merely requesting a "Writ of Mandamus", in spite of the fact that § 1361 was apparently enacted because "Writs of Mandamus" had been abolished. Furthermore, the District Court refused to allow the Petition to be amended in order to argue the authority of 26 U.S.C. § 7421, although, 28 U.S.C. § 1361 does not permit

injunctive relief. The Eleventh Circuit continued with that misapplication of the law and noted the availability of § 7422 for a refund. In further violation of the doctrine of statutory construction, the Eleventh Circuit stated that, "Section 7206 does not, however, require a person to be 'absolutely certain' when filing documents under penalties of perjury". See App. 1.

A. Statement of Facts.

This case arises from a request by the Petitioner, by letter to enjoin the defendant from activities clearly outside the scope of his employment. The request was ignored and this action in District Court followed. Furthermore, because it was clearly shown that the defendant was operating outside the scope of his employment, the Petitioner demonstrated with cited authority that the government employee was ineligible for representation by the Department of Justice. That issue was not addressed.

B. Procedural Background.

Because of the complexity of the internal revenue laws, Congress provided numerous safeguards before property could be taken from the people under authority of those laws. The Secretary reaffirmed through regulation [26 CFR § 601.106 (f) (1) Rule I] that taking of property without due process of law was in violation of the Fifth Amendment to the United States Constitution. The clear violation of those safeguards was the purpose of the suit filed in the District Court for the Middle District of Florida.

C. Argument. Statutory Construction.

The facts of this case raise the following questions:

(a) whether documents filed by the defendant were properly executed.
(b) whether certain statutes enacted by Congress have a clear unambiguous meaning.
(c) whether government employees, or any court can change the meaning of a statute.

In a nation governed by laws enacted by a duly elected legislature, the laws must be accepted as they are written. Those laws must be accepted by the courts as they were written. Since 1897, this Court has consistently ruled that where the words of a statute are unambiguous, statutory construction is at an end. In 1996, this Court reconfirmed their consistent rulings that a statute means what it says and that no court can rewrite a statute. This Court has certainly made a statement concerning statutory construction that has endured for almost 100 years. Because of that truth, it is inconceivable that this Court would rule contrary to the clear meaning of the 46 words in 26 U.S.C. § 6065, which was obviously written for the purpose contained therein. The words of the body of the statute must endure in spite of various attempts to change its meaning by claiming the title supersedes the body of the statute. Such a claim is defeated by 26 U.S.C. § 7806 which precludes descriptive matter in a statute from giving any legal effect. The documents executed by the defendants in this case were not in accordance with § 6065.

D. Argument. Authority to Issue Notices of Deficiency, Levy and Liens.

The Congress of the United States, as noted by this Court in 1897, is "presumed to know the meaning of the words and the rules of grammar", U.S. v. Goldenberg, et al., 168 U.S. 95, 102 (1897). In accord with that presumption, Congress wrote title 26 United States Code. Included in that title is § 6331 enacted with the following words:

> Sec. 6331. Levy and distraint.
> (a) Authority of Secretary.
> If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.

Section 6331 (d) reiterates the authority of the levy by referring to subsection (a):

(d) Requirement of notice before levy.

> (1) In general. Levy may be made under subsection (a) upon the salary or wages or other property of any person
> with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy. (emphasis added)

Certainly if Congress had intended for the "levy" to apply to any person in this country, they would have written the statute to reflect that intention. Instead, they wrote that levy may be made on any person under subsection (a). A review of subsection (a) identifies those subject to the levy.

This Court has ruled for almost 100 years that the words in a statute must be taken as they were written. In § 6331 (d), it is written that "Levy may be made under subsection (a) upon the salary or wages or other property of any person". It may be misleading, but it certainly is not ambiguous. This Court has consistently stated:

> The primary and general rule of statutory construction is that **the intent of the lawmaker is to be found in the language that he has used.** He is presumed to know the **meaning of the words** and the rules of grammar. U.S. v. Goldenberg, et al., 168 U.S. 95, 102 (1897). (emphasis added)

In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that, **if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer,** we feel bound to hold that the Joint Resolution of 1931 and

§ 803 (a) of the Act of 1932 apply only to transfers with reservation of life income made subsequent to the dates of their adoption respectively. Hassett v. Welch., 303 US 303, pp. 314 - 315, 82 L Ed 858. (1938)(emphasis added)

In construing federal revenue statute, Supreme Court gives no weight to Treasury Regulation **which attempts to add to statute something which is not there**. United States v Calamaro (1957) 354 US 351, 1 L. Ed 2d 1394, 77 S Ct 1138 (1957) (emphasis added)

Going behind the **plain language of a statute** in search of a possibly contrary congressional intent is "a step to be taken cautiously" even under the best of circumstances. Piper v Chris-Craft Industries, Inc., 430 US 1, 26, 51 L Ed 2d 124, 97 S Ct 926 (1977). (emphasis added)

When we find the terms of a statute unambiguous, judicial inquiry should be complete except in rare and exceptional circumstances. Demarest v Manspeaker, 498 US 184, 112 L Ed 2d 608, 111 S Ct 599 (1991)

The argument is meritless in this case, though, for this principle of statutory construction applies only when the meaning of a statute is in doubt, see Noerr, supra, and here "the **statutory language is unambiguous,**" ante, at ____, 127 L Ed 2d, at 111. Now v. Scheidler, 510 US ____, p. ____, 127 L Ed 2d 99, pp. 112 (1994). (emphasis added)

In a statutory construction case, the beginning point must be the **language of the statute**, and when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning--in all but the most extraordinary circumstance--is finished; **courts must give effect to the clear meaning of statutes as written.** Estate of Cowart v. Nicklos Drilling Co., 505 US ____, 120 L Ed 2d 379, 112 S Ct 2589 (1992) (emphasis added)

When the words of a statute are unambiguous, the first canon of statutory construction--that courts must presume that a legislature **says in a statute what it means and means in a statute what it says** there--is also the last, and judicial inquiry is complete. Connecticut National Bank v. Germain, 503 US ____, p. ____, 117 L.Ed 2nd 391(1992) (emphasis added)

Judges "are not at liberty to pick and choose among congressional enactments, and when two [or more] statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Morton v Mancari, 417 US 535, 551, 41 L Ed 2d 290, 94 S Ct 2474 (1974). County of Yakima v. Yakima Nation, 502 US ____, p. ____, 116 L Ed 687 (1992)

When the terms of a statute are unambiguous, judicial inquiry is complete except in rare and exceptional circumstances. Freytag v. Commissioner, 501 US 868, 115 L Ed 2d 764, 111 S Ct 2631 (1991)

> "...courts do not resort to legislative history to cloud a statutory text that is clear. Ratzlaf v. United States, 510 US ____, p. ____, 126 L Ed 2d 615 (1994).

As the years went by, this Court became more direct in its opinions. In Beecham, below, this Court clearly noted that they were not required to read the mind of the legislatures, but could only rule on what was actually written. To wit:

> The United States Supreme Court, by denying the existence of an ambiguity in some federal statutory language, does not claim to be perfectly certain that the court has defined Congress' intentions as to a particular situation, but the court's task is not the hopeless one of ascertaining what the legislators who passed the law **would have decided had they reconvened** to consider the parties' particular case; rather, the court's task is **to determine whether the language the legislators actually enacted has a plain, unambiguous meaning.** Beecham v. United States, 511 US ____, p. ____, 128 L Ed 2d 383 (1994). (emphasis added)

It is to be noted that this Court declared that it was not their task to determine what the legislators would have decided on this particular matter, but what the legislators ACTUALLY ENACTED. Of course, there is no doubt that the enactments at issue here are not ambiguous. The very next year this Court again clearly stated their intention that the words of a statute must be accepted as they are written:

> Judicial analysis in a case involving statutory construction should begin with the language of the statute, for when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished. Hassett v. Welch., 303 US 303, pp. 314 - 315, 82 L Ed 858. ____ (1995)

Because of the constant identical rulings by this Court for almost 100 years, it is inconceivable that the lower Courts have not found in total agreement with those decisions. For whatever reasons, they appear to react to another calling not consistent with the enacted laws of Congress and the rulings of this Court. If there was ever any doubt as to this Court's position on the content of a statute, just a few months ago it was again written so plainly that there can be no room for further discussion. In January of 1996, this Court stated:

> We are **bound by the language of the statute as it is written**, and even if the rule Lundy advocates might "accor[d] with good policy," **we are not at liberty "to rewrite [the] statute** because [we] might deem its effects susceptible of improvement." Badaracco, 464 US, at 398, 78 L Ed 2d 549, 104 S Ct 756. Applying § 6512(b)(3)(B) **as Congress drafted it,** we find that the applicable look-back period in this case is two years, measured from the date of the mailing of the notice of deficiency. Accordingly, we find that the Tax Court lacked jurisdiction to award Lundy a refund of his overwithheld taxes. The judgment is reversed. Commissioner v. Lundy, 516 US ____, 133 L Ed 2d 611, 116 S Ct ____(January 17, 1996)

Commissioner v. Lundy, clearly stated that the United States Supreme Court was, **"bound by the language of the statute as it is written"**, WAS NOT **"at liberty to rewrite [the] statute"**, and must apply a statute **"as Congress drafted it"**. If this Court was limited to the statute "as Congress drafted it" in Commissioner v. Lundy, supra, it would logically follow that all courts would be similarly burdened. Why do the lower courts refuse to accept the words placed in a statute by the duly elected representatives of the people? Especially when that matter has been upheld by our highest court for almost 100 years. Crowning dozens of decisions, this Court has declared in Commissioner v. Lundy, supra, once and for all that the legislators make the laws and not the courts.

E. Argument. The statutes cannot be rewritten by the courts.

This Court reiterated in Commissioner v. Lundy, supra, that it "says in a statute what it means and means in a statute what it says", Connecticut National Bank v. Germain, supra. Obviously this means that 26 U.S.C. §§ 6331 and 6020 means EXACTLY WHAT WAS WRITTEN by Congress. Furthermore, this means that § 6065 means EXACTLY WHAT WAS WRITTEN. In addition, this means that 28 U.S.C.§ 1361 means EXACTLY WHAT WAS WRITTEN by Congress. It DOES NOT mean that the Petitioner was requesting a "Writ of Mandamus" as found by the lower courts. Section 1361 means that, "the United States Supreme Court is bound by the language of the statute as it is written", and the following was written:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Very few statutes declare jurisdiction therein, as § 1361. The district court had original jurisdiction, the record clearly demonstrated that the government employee DID NOT perform his duty. The duty was to perform ministerial duties in accordance with the valid internal revenue laws.

The record in this case shows that the defendant made no effort to deny the allegations set forth in the Complaint. The defendants was operating outside the scope of his employment. Therefore, he had no right to representation by the Department of Justice. The only defense offered by the Justice Department was 26 U.S.C. § 7421. There would be no need for any other law in the Internal Revenue Code if § 7421 was beyond defeat. Section 7421 cannot be applicable until ALL OTHER LAWFUL PROCEDURES are followed. The remainder of the statutes in Title 26 U.S.C. cannot be declared surplusage because of the might of § 7421. Such was the obvious purpose of Title 28 § 1361, to compel government employees to perform their duty.

The lower courts have held that §§ 6065, 6020, 6331 and 28 U.S.C. §1361 do not mean what was enacted by Congress, but have another meaning which may include government and court inserted phrases, which were left out by Congress. The Eleventh Circuit stated in its opinion in regard to §§ 6065 and 7206:

> Contrary to Appellant's contention, a complete understanding of the internal revenue laws is not required to sign documents under penalties of perjury, nor must he be absolutely certain as to the correctess of every material matter. (See App. 1)

This would appear to be a coercion to ignore §§ 6065 and 7206 as enacted by Congress, execute all government documents under penalties of perjury, and depend on the interpretation of the courts to determine if you were right or wrong. The statutes were not written with that latitude and it is the **individual** person that must make that decision, and no court can make that decision for you. This Court has the authority to set aside fraudulently begotten judgments as held in the following case:

> Of particular relevance here, the inherent power also allows a federal court to vacate its own judgment upon proof that a fraud has been perpetrated upon the court . . This "historic power of equity to set aside fraudulently begotten judgments". . . is necessary to the integrity of the courts, for "tampering with the administration of justice in [this] manner ... involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safe-guard the public." . . . Moreover, a court has the power to conduct an independent investigation in order to determine whether it has been the victim of fraud. Chambers v Nasco, Inc., 501 US ____, p. ____, 115 L Ed 2d 27, (1991) (emphasis added)

CONCLUSION

This Court has stated that when the laws are clear and unambiguous, they say what they mean and mean what they say. The Petitioner has relied on the plain meaning of the laws and authorities as stated in his pleadings and as previously held by this Court. Contrary to the apparent fear of the lower courts, this government will not collapse if the laws as they were written by our duly elected representatives are obeyed. However, there is no doubt that if the laws enacted by Congress ARE NOT OBEYED, we will surely all suffer the fate predicted by Justice Brandeis in 1928. This dissenting opinion by Justice Brandeis in Olmstead v United States, was accepted by this Court as a doctrine and quoted in Miranda v. Arizona, [384 US 436, 16 L Ed 2d 694, 86 S Ct 1602, 10 ALR3d 974, (1966)], as well as countless other cases. Justice Brandeis prophesied:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law **scrupulously.** Our Government is the potent, the omnipresent teacher. For good or for ill, **it teaches the whole people by its example**. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means ... would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

> Olmstead v United States, 277 US 438; 485,72 L. Ed 944, 959, 48 S Ct 564, 66 ALR 376 (1928) (emphasis added)

In accordance with that doctrine, and the duly enacted laws of this country, Petitioner requests that this Petition for Certiorari be granted.

Respectfully resubmitted on this 31 day of August 1996.

s/ Robert L Vines

Robert L. Vines
1000 62nd Terrace South
St. Petersburg, FL 33705

APPENDIX 1

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2234

D.C. Docket No. 94-1020-CIV-T-25C

ROBERT L. VINES,

Petitioner-Appellant,

versus

WILLIAM HAMILTON,

Respondent-Appellee

Appeal from the United States District Court
for the Middle District of Florida

June 3, 1996

Before ANDERSON, BIRCH and BLACK, Circuit judges.

PER CURIAM:

Appellant Robert L. Vines filed a petition for a writ of mandamus against William Hamilton, an officer of the Internal Revenue Service (IRS), seeking, inter alia, to compel Hamilton to "comply with the of property collected by the IRS. The district court dismissed the petition finding (1) service of process was defective; (2) it had no personal jurisdiction over "Appellee, (3)venue was improper and (4) Appellant had failed to state a claim for mandamus.

We Affirm.[1]

Three elements must exist before a writ of mandamus may issue: (1) plaintiff must have a clear right to relief; (2) defendant must have a clear duty to act; and (3) there must be no other adequate remedy available. District Lodge no. 166, Int'l Assoc. Of Machinists and Aerospace Workers v. TWA Services, Inc., 731 F.2d 711, 717 (11 Cir. 1984) (citations omitted), cert. Denied, 105 S.Ct. 1175 (1985); Jones v. Alexander, 609 F.2d 778, 781 (5th Cir.)[2] (citations omitted), cert. Denied, 101 S.Ct. 100

[1] We hold that Appellant failed to state a claim for mandamus relief and therefore need not, and do not, address the merits of whether, the district court correctly found defective service, no personal jurisdiction, and improper venue.

[2] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (enbanc), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to close of business on September 30, 1981.

(1980). Appellant has failed to show that no other adequate remedy is available.

First, Appellant may file a suit for refund under 26 U.S.C. § 7422. Appellant fails to adequately explain how a suit for refund would be unavailable to him. Second, Appellant could file suit under 26 U.S.C. §§ 7432 or 7433 for failure to release a lien or unauthorized collection. Appellant argues that §§ 7432 and 7433 are inadequate remedies because it would require him to file documents under penalty of perjury. He contends that he does not have sufficient knowledge of the tax laws and that the Appellee has failed to adequately explain them to him, and therefore, he "could not sign any document under penalties of perjury and be absolutely certain that it was true and correct as to every material matter." This argument is without merit.

26 U.S.C. § 7206 makes it a felony for one who "[w]illfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter." 26 U.S.C. § 7206 (1). Section 7206 does not, however, require a person to be "absolutely certain" when filing documents under penalties of perjury. Rather, specific intent is required. United States v. Morris, 20 F.3d 1111, 1115 (11th Cir. 1994).

[A] defendant must be shown . . . to have known that, at the time of signing, the [document] was materially incorrect or in violation of existing tax laws. 26 U.S.C. a 7206(1). Such specific intent may be negated by a good faith misunderstanding of the law or a good-faith belief that

one is not violating the law, regardless of whether or not the belief is reasonable.

Id. (Citations omitted). Contrary to Appellant's contention, a complete understanding of the internal revenue laws is not required to sign documents under penalties of perjury, nor must he be absolutely certain as to the correctness of every material matter. Section 7206 does not foreclose §§ 7432 and 7433 as possible alternative remedies.

For the foregoing reasons, we hold that Appellant failed to state a claim for mandamus relief.

AFFIRMED.

APPENDIX 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED

ROBERT L. VINES,

95 JAN 13 A.M. 10:16

Petitioner,

v. Case No. 94-1020-CIV-T-25C

WILLIAM HAMILTON,

Respondent,

ORDER

The Court has reviewed Petitioner's Motion for Writ of Mandamus (Dkt. 1); and, Petitioner's Motion to Amend Writ (Dkt. 10) along with the other pleadings filed by Petitioner and the Respondent's Motion to Dismiss (Dkt. 12).

Petitioner asks this Court to issue a mandamus against Respondent Hamilton, an individual employed by the Internal Revenue Service in Charlotte, North Carolina. Petitioner apparently seeks the return of taxes collected, claiming without substantiation, that Respondent was responsible for the wrongful collection of the taxes.

The Court finds that the petition fails to allege that this Court has personal jurisdiction over the Respondent, or

even that venue is proper in this District. Furthermore, the file does not reflect that Respondent was properly served with process. Nor does the Petitioner cite authority for his attempt to recover wrongfully collected taxes from an individual I.R.S. employee. The Court must therefore find that it has no personal jurisdiction over Respondent, that venue is improper, and that Petitioner has failed to state a claim for mandamus. In reaching this conclusion, the Court relies on the authorities cited in Respondent's Motion to Dismiss (Dkt. 12).

It is therefore ORDERED:

1. Respondent's Motion to Dismiss Dkt 12) is GRANTED and this action is dismissed.

2. All other pending motions (Dkts. 1, 10, 11, 16, 17, 20, 22,) are DENIED.

DONE AND ORDERED at Tampa, Florida this 12 day of January, 1995.

s/_____
HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies: Plaintiff
Counsel of Record